



JUN 04 2010

**TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION**

Uniform Issue List: 408.03-00

SE:T; EP:RA:T2

Legend:

Taxpayer A

— *****

Financial Institution D
Financial Institution E

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IRA X

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Account 2

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Account 3

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Amount 1
Amount 2
Amount 3
Amount 4

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Date 1:
Date 2:

Dear *****

This is in response to a letter dated *****, ****, supplemented by correspondence dated *****, ****, *****, **** and *****, **** in which your authorized representative requests, on your behalf, a waiver of the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code (the "Code").

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested:

Taxpayer A, age **, was the owner of IRA X, a qualified annuity established and maintained at Financial Institution D. In **** Taxpayer A received Amount 1 as a distribution from Financial Institution D. On Date 1 Amount 2 was deposited in Account 2, Taxpayer A's high interest checking account, at financial institution E. Taxpayer A represents that he intended for Amount 1 to be rolled over into an individual retirement arrangement ("IRA"). Taxpayer A asserts that his failure to accomplish a rollover within the 60 day period prescribed by Section 408(d)(3) of the Code was due to financial error.

Taxpayer A represents that he intended for Account 2 to be a qualified IRA, however it was instead deposited into a high interest checking account. On Date 2, Taxpayer A withdrew Amount 4 in three separate transactions. On this date, in three separate transactions, Taxpayer A invested Amount 4 in various nonqualified investment vehicles which were held in Account 3.

Taxpayer A became aware that Amount 1 had been distributed from IRA X and had not been rolled over into another qualified IRA when he prepared his **** tax return. His tax preparer notified him as to the taxable event.

Based on the above facts and representations, you request a ruling that the Internal Revenue Service ("Service") waive the 60-day rollover requirement contained in section 408(d)(3) of the Code with respect to the distribution of Amount 1 from qualified annuity IRA X and its redeposit in Account 2.

Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d), any amount paid or distributed out of an IRA shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72 of the Code.

Section 408(d)(3) of the Code defines, and provides the rules applicable to IRA rollovers.

Section 408(d)(3)(A) of the Code provides that section 408(d)(1) of the Code does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the IRA is maintained if:

(i) the entire amount received (including money and any other property) is paid into an IRA for the benefit of such individual not later than the 60th day after the day on which the individual receives the payment or distribution; or

(ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60th day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into

such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to section 408(d)(3)).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) does not apply to any amount described in section 408(d)(3)(A)(i) received by an individual from an IRA if at any time during the 1-year period ending on the day of such receipt such individual received any other amount described in section 408(d)(3)(A)(i) from an IRA which was not includible in gross income because of the application of section 408(d)(3).

Section 408(d)(3)(D) of the Code provides a similar 60-day rollover period for partial rollovers.

Section 408(d)(3)(E) of the Code provides that the rollover provisions of section 408(d) do not apply to any amount required to be distributed under section 408(a)(6).

Section 408(d)(3)(I) of the Code provides that the Secretary may waive the 60-day requirement under sections 408(d)(3)(A) and 408(d)(3)(D) of the Code where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occurred after December 31, 2001, are eligible for the waiver under section 408(d)(3)(I) of the Code.

Rev. Proc. 2003-16, 2003-4 I.R.B. 359 (January 27, 2003) provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 408(d)(3)(I), the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error, (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

In this case, Taxpayer A claims that an error by Financial Institution E caused Amount 1 to be deposited in a high interest checking account rather than being deposited into a rollover IRA. However, the application form completed by Taxpayer A fails to demonstrate Taxpayer A intended that the distribution be rolled over to an IRA nor does it demonstrate that Financial Institution E committed any error. Taxpayer A failed to establish that Financial Institution E was on notice of his intent to rollover the distribution.

Further, Taxpayer A is unable to provide either (1) a contemporaneous written document (such as an application form or letter) establishing that Taxpayer A applied to Financial Institution E for establishment of a rollover IRA, or (2) a written statement from Financial Institution E that it had erred in placing Taxpayer A's assets in a nonqualified account.

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Therefore, Taxpayer A's Date 2 deposit of Annuity funds (Amount 1) from IRA X into Account 2 and their subsequent investments in nonqualified investment vehicles with Financial Institution E is a taxable event under section 408(d)(1) of the Code for the **** tax year, and the Service declines to waive the 60-day rollover requirement in this case.

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter has been sent to your authorized representative in accordance with a power of attorney on file in this office.

If you wish to inquire about this ruling, please address all correspondence to SE:T:EP:RA:T2.

Sincerely,


